

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

BRISTOL, ss.

14-P-1964

2015 SITTING

COMMONWEALTH

V.

JARED ABDALLAH

ON APPEAL FROM A JUDGEMENT OF THE
BRISTOL SUPERIOR COURT

COMMONWEALTH'S BRIEF
AND RECORD APPENDIX

Respectfully submitted,
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ISSUE PRESENTED

WHETHER THE MOTION JUDGE ERRED IN ALLOWING THE DEFENDANT'S MOTION TO SUPPRESS THE CONTENTS OF HIS BACKPACK WHERE THE DEFENDANT WAS WEARING THE BACKPACK AT THE TIME OF HIS ARREST BUT WAS ASKED TO REMOVE IT BEFORE HE GOT IN THE POLICE CRUISER, THE BACKPACK WAS THEN TRANSPORTED TO THE POLICE STATION ALONG WITH THE DEFENDANT, AND ON ARRIVAL AT THE STATION THE BACKPACK WAS SEARCHED IN ACCORDANCE WITH THE POLICE DEPARTMENT'S INVENTORY POLICY?

STATEMENT OF THE CASE¹

On June 1, 2013, Raynham police officers were dispatched to the Quality Inn hotel, and arrested the defendant, Jared Abdallah, on an outstanding warrant (Tr. 6-8, 11-13).² During the arrest, the officers removed a backpack that the defendant was wearing and transported it to the station with the defendant (Tr. 15, 17-18). At the station, the police inventoried the

¹ Record references will be as follow: record appendix (R.A. [pg. #]); transcript of hearing on motion to suppress (Tr. [pg. #]).

² Certain facts in the statement of the case are based on the testimony of Sergeant David LaPlante, the Raynham Police Officer who arrested the defendant and testified at the hearing on the motion to suppress. Sergeant LaPlante was the only witness who testified at the motion hearing and the motion judge credited his testimony (Tr. 5, 46).

backpack and found \$378.00, and a brown pillow case containing: 1) four bundles of paper money wrapped in elastic bands; 2) clear cellophane from a cigarette package with two pieces of what appeared to be cocaine; 3) a small clear baggy containing what appeared to be cocaine; 4) a small clear baggy containing what appeared to be three pieces of cocaine; 5) a clear baggy containing what appeared to be several hundred Percocet pills; 6) a clear baggy containing what appeared to be sixteen Percocet pills; 7) a small tied baggy containing what appeared to be sixty-seven Percocet pills; 8) a small zip lock bag containing what appeared to be forty-one Percocet pills, and three half pills; 9) a small clear baggy containing what appeared to be fifty-two Percocet pills; and 10) a small clear baggy containing what appeared to be six Percocet pills (R.A. 18; Tr. 26-27). The defendant was subsequently indicted for trafficking of Percocet, 36 grams or more (G.L. c. 94C, § 32E (c) (2)); trafficking of cocaine, 18 grams or more (G.L. c. 94C, § 32E (b) (1)); unlicensed possession of Percocet with intent to distribute (G.L. c. 94C, § 32A (a)); and receiving stolen property of \$250 or more (G.L. c. 266, § 60) (R.A. 1-8).

On or about May 15, 2014, the defendant filed a motion to suppress the evidence seized during the search of his backpack, along with an affidavit and a supporting memorandum (R.A. 9-15).

On September 15, 2014, an evidentiary hearing was held on the defendant's motion (Veary, J.) (Tr. 1-49). At that hearing, the Commonwealth called Sergeant David LaPlante - the arresting officer - and argued that the search of the defendant's backpack was done in accordance with the Raynham Police Department's Inventory Policy, which the Commonwealth admitted as an exhibit at the hearing (Tr. 5, 44-45). At the end of the hearing, Judge Veary made findings on the record and allowed the defendant's motion (Tr. 45-48).

On December 15, 2014, the Commonwealth's Application for Leave to Proceed with Interlocutory Appeal was allowed (Hines, J.). The case was entered on this Court's docket on December 24, 2014.

STATEMENT OF FACTS

I. THE DEFENDANT'S ARREST AND THE SEARCH OF HIS BACKPACK

The following facts are derived from the evidence elicited at the evidentiary hearing, specifically

Sergeant LaPlante's testimony, which Judge Veary credited in its entirety (Tr. 46).

On June 1, 2013, at approximately 11:39 A.M., Sgt. LaPlante, Lieutenant Carr, and Detective Riley were dispatched to the Quality Inn for a disturbance involving the defendant and the front desk (Tr. 5-9). The officers were informed that there was an active warrant for the defendant's arrest (Tr. 8). Sergeant LaPlante was the first to arrive in his cruiser, and Lt. Carr and Det. Riley arrived shortly thereafter (Tr. 9, 10).

When the officers got there, they spoke with the front desk employee - Carol Bergen - who said that it was past the checkout time for that day, and the defendant had given her a hard time when she asked him to leave (Tr. 8). She also told the officers that she knew members of the Raynham Police Department had been there the day before looking for the defendant because there was a warrant for his arrest (Tr. 8). After having that conversation with Bergen, the three officers proceeded to the back building of the Quality Inn to Room 206 where the defendant was located (Tr. 9-10). As they approached the room, Sgt. LaPlante could hear a male voice talking to someone but

couldn't hear anybody talking back (Tr. 10). At that point, Sgt. LaPlante knocked loudly on the door and announced, "Raynham Police. Open the door." (Tr. 10). The door to the room then opened and the defendant, who was holding a phone, stepped out of the room (Tr. 10-13). Sergeant LaPlante recognized the defendant from other incidents, including a stabbing in which the defendant had been a victim (Tr. 11-12).

When the defendant exited the room, Sgt. LaPlante told him that they had a warrant for his arrest, and asked him to drop the phone he had in his hand (Tr. 13). The defendant complied with Sgt. LaPlante's order, and then Sgt. LaPlante asked the defendant to turn around and told him he was under arrest and handcuffed him (Tr. 13). After the defendant was handcuffed, Sgt. LaPlante asked him if he had any weapons or needles on his person; he said "no" (Tr. 13-14). Sergeant LaPlante then pat-frisked the defendant for weapons and while he was doing so, he realized that the defendant had a Timberland brand backpack on (Tr. 14). It was a loose cloth bag and the shoulder straps were made of rope (Tr. 14). It also had a little string for the drawstring at the top of the bag (Tr. 14). There was no lock on the bag (Tr. 14). A

photograph of the bag was admitted as an exhibit at the hearing (Tr. 14-15). Sergeant LaPlante advised the defendant that he (LaPlante) would need to remove the handcuffs from the defendant so that he (LaPlante) could take the backpack off of the defendant (Tr. 15). Sergeant LaPlante then removed the handcuffs and the backpack, and Lt. Carr temporarily took possession of the backpack (Tr. 15-16). The handcuffs were then placed back on the defendant and Sgt. LaPlante escorted him downstairs and outside and placed him in the police cruiser (Tr. 16). Sergeant LaPlante told the defendant that he was being placed under arrest on the outstanding warrant, and that whatever belongings he had in his hotel room, he would be able to pick up at the front desk of the hotel after he was released from jail (Tr. 16). The defendant said that he had a computer and a play station in the room, and asked if the police could secure that for him (Tr. 16). Detective Riley secured those two items for the defendant (Tr. 16).

The defendant was also asked if he had a vehicle with him and he indicated that he had his grandmother's car and it was parked in the hotel parking lot (Tr. 17). The police "checked with the

front desk [of the hotel] and asked if the vehicle could remain on the property until someone could pick it up," and they were told that would be okay (Tr. 17). The defendant also had clothes and personal items in the room which were going to be held at the front desk for him (Tr. 17).

After the defendant was placed in Sgt. LaPlante's cruiser, Lt. Carr handed the defendant's backpack back to Sgt. LaPlante and Sgt. LaPlante placed the backpack in the front seat of the cruiser, and transported both the defendant and the backpack to the police station (Tr. 17-18). During the transport, Sgt. LaPlante asked the defendant if he was going to be able to obtain any money for bail, and the defendant said that he had money in his backpack (Tr. 18). They arrived at the station within minutes, and Sgt. LaPlante brought the defendant and his backpack into the building, and placed the backpack on the booking desk (Tr. 18, 19, 20). Sergeant LaPlante then began booking the defendant in accordance with the normal booking procedures of the Raynham Police Department (Tr. 18). Sergeant LaPlante testified as to his normal procedure: he pulls into the sally port, and secures his weapon and the keys to the cruiser in the lock

box; he then removes the detainee from the cruiser, and brings the detainee inside the booking room, and at that time he does another pat-frisk of the detainee to make sure that there are no weapons (Tr. 18-19).

After Sgt. LaPlante pat-frisked the defendant at the station, he removed the defendant's handcuffs and asked him to remove any jewelry, outer clothing, anything from his pockets, and his shoes (Tr. 19). The defendant complied and removed a pack of Newport cigarettes from his pockets, a second package of cigarettes that was half-gone, and some keys, along with his clothing and shoes (Tr. 21). In accordance with normal procedure, these items were placed on the bench in the booking room, to be inventoried (Tr. 21). Sergeant LaPlante again pat-frisked the defendant and placed him in the holding cell right next to the booking desk (Tr. 20). Sergeant LaPlante then sat down at the computer at the booking desk and continued with the normal booking procedure which included collecting information, asking the defendant if he had any medical issues, any injuries, suicide questions, and medical questions (Tr. 20). Throughout this interaction, the defendant's backpack was sitting beside Sgt. LaPlante on the booking desk (Tr. 20).

At the hearing, Sgt. LaPlante explained that all of the property brought into the police station is inventoried, in accordance with the Raynham Police Department's written policy on search and seizure - marked as Exhibit 3 at the hearing - in order to check for weapons or anything else that the detainee may be able to harm himself or others with, and also to safeguard the detainee's property and to safeguard the officers from false allegations of theft (R.A. 21-32; Tr. 21-23).

Sergeant LaPlante testified that the Raynham Police Department also has a policy on detainee processing, which includes a booking inventory section (Tr. 24-25). This policy (R.A. 33-46), which was admitted as Exhibit 4 at the hearing, reads in pertinent part, as follows:

4. BOOKING INVENTORY

a. An inventory of the detainee's property shall be conducted.

1) When the handcuffs are removed, the detainee shall be directed to remove all articles or items of personal property that [s]he is carrying on his/her person. This will include:

a) All items in all pockets;

b) Items secreted on the detainee's person;

- c) Belts; and
 - d) Jewelry. Note: In the event a piece of jewelry cannot be removed without damaging it, the jewelry may remain with the detainee if it does not pose a threat to the officers.
- 2) If the detainee is expected to be placed in a holding cell or taken directly to court after booking, the following items shall also be removed and placed with the detainee's property
- a) Shoe laces;
 - b) Draw strings;
 - c) Bras; and
 - d) Other similar items.
- 3) After the arrestee claims to have removed all personal effects from his/her person, [s]he will be subject to a full search of his/her person by an officer of the same sex. If such an officer is not available:
- a) A trained department employee or an officer from another police agency, of the same sex as the detainee, may conduct the search, if necessary.
 - b) If no officer or trained employee of the same sex is available as a last resort a search may be conducted by having the person:
 - i. Turn pockets inside out, if possible.

- ii. Lift the shirt off the waist band and roll the waist band.
 - iii. Expose the interior of cuffs.
 - iv. Bras should be removed by the prisoner in privacy, out of view of male officers.
- 4) The following items should be searched as part of the inventory:
- a) All outer clothing worn by the arrestee;
 - b) Wallets;
 - c) Purses; and
 - d) Packs, bags, or other containers brought in as personal property
- 5) Any container or article found on the detainee's person or carried by the detainee shall be opened and its contents inventoried.

...

In accordance with the department's inventory policy, the defendant's backpack was inventoried along with the other items that the defendant had removed at the station (Tr. 26). Before inventorying the contents of the backpack, Sgt. LaPlante again asked the defendant if he had any money for bail, and the defendant indicated that he had money in the backpack (Tr. 26). When Sgt. LaPlante picked up the backpack

from the booking desk, he felt what appeared to be loose pills in some type of baggie, and then he opened the backpack and began to inventory it (Tr. 27). The defendant was in the holding cell right next to Sgt. LaPlante when Sgt. LaPlante was inventorying the items in the backpack (Tr. 27). Lieutenant Carr was also present at this time (Tr. 28). Sergeant LaPlante found several hundred dollars worth of cash on the top of the backpack, and a pillowcase, which contained four separate bundles of money in glassine baggies, three separate clear glassine type packages containing what appeared to be pieces of cocaine inside them, and six separately packaged glassine baggies containing several hundred Percocet pills (Tr. 28).

Once Sgt. LaPlante recovered the items in the defendant's backpack, Sgt. LaPlante began to lay everything out on the booking floor so the officers could do a complete inventory, Det. Riley took photographs, and it was all eventually packaged in evidence bags and entered into evidence (Tr. 29). Sergeant LaPlante did a full inventory of the items in his police report (Tr. 29). The non-contraband items - the keys and cigarettes in the defendant's pockets - that were recovered were placed in a personal property

bag, and were sent with the defendant when he went to the jail (Tr. 30).

II. THE JUDGE'S FINDINGS AND RULING

Judge Veary made the following findings and rulings on the record:

There's a bright line rule established in the Commonwealth of Massachusetts found, among other places, in Commonwealth v. Madera, 402 Mass. 156, a 1988 case. And at 10, 161, it says, and I quote, "The police are entitled to a bright line rule that permits them, even in the absence of exigent circumstances, to search a bag carried by a person whom they lawfully arrest on probable cause, or otherwise, where there is also probable cause to believe that the bag contains evidence of the crime for which the arrest is made." Because Article 14 does not forbid such a rule, the search of the defendant's bag in the Madera case was lawful.

Here we have several significant departures from the law under Commonwealth vs. Madera. I note, and the Commonwealth has appropriately -- I find incidentally all of the testimony of Sergeant LaPlante to be credible, and I find them to be the facts pertinent to my ruling. However, Exhibit 4 very clearly points out -- and I agree with the defendant's characterization of the interplay of these policies -- that it is the detainee processing policy which invites the booking policy. The policies relied upon by both parties are listed under Roman Numeral III in the detainee processing policy -- that's Exhibit No. 4 -- outlining procedures. The procedures are predicated upon arrival at the station. That is significant in this case, because the bag being searched, although found on the defendant, it, by the Commonwealth's testimony, had no connection at all with the arrest of this particular defendant. The defendant was arrested pursuant to a warrant. The warrant was for the crime of larceny under. Larceny under \$250. And it was an outstanding warrant.

I would submit that on that basis, there was no probable cause connecting the bag with the arrest. I further find under these facts that once the bag was removed from the defendant, and he was rehandcuffed, that bag offered, and I have heard no testimony suggesting that it offered, any threat to any police officer; an important concern under the law and an important concern in the eyes of this Court.

Nevertheless, the only reason that that bag which was searched was eventually brought to the booking procedure and the station, which is the threshold for Exhibit No. 4, is by police action, not by action of this defendant. It was the police that removed that bag from the defendant, the police that seized the bag, the police that transported the bag back to the police station, and the police who searched the bag as part of its booking procedure. I see nothing wrong with these procedures, but they do not justify the search of the bag, not under Commonwealth v. Madera, because there is simply no connection of the bag to the cause of the arrest, and there is no probable cause in and of itself that I have found on these facts for a search of the bag.

Accordingly, I find that the Commonwealth - excuse me - the motion to suppress is appropriately allowed, and the Court is allowing it and suppressing all evidence that was either found in the bag or derived therefrom.

(Tr. 45-48).

ARGUMENT

THE MOTION JUDGE IMPROPERLY ALLOWED THE DEFENDANT'S
MOTION TO SUPPRESS THE ITEMS FOUND IN THE DEFENDANT'S
BACKPACK WHERE THE DEFENDANT WAS WEARING THE BACKPACK
WHEN HE WAS ARRESTED, THE BACKPACK WAS THEN
TRANSPORTED TO THE STATION ALONG WITH THE DEFENDANT,
AND ON ARRIVAL AT THE STATION THE BACKPACK WAS
SEARCHED IN ACCORDANCE WITH THE POLICE DEPARTMENT'S
INVENTORY POLICY

Under both the Fourth Amendment and Article 14, an inventory search of the person of an arrestee is permissible. *Illinois v. Lafayette*, 462 U.S. 640 (1983); *Commonwealth v. Rostad*, 410 Mass. 618 (1991); *Commonwealth v. Benoit*, 382 Mass. 210, 219 (1981); *Commonwealth v. Ross*, 361 Mass. 665, 681 (1972). The inventory search may be made not only of the physical person of the arrestee, but also of the clothing he is wearing and articles he is carrying. *Lafayette, supra* (inventory of the contents of a shoulder bag); *Rostad, supra* (inventory of the contents of a handbag impermissible under art. 14 because no written procedures); *Commonwealth v. Wilson*, 389 Mass. 115, 117 (1983) (inventory of the contents of a wallet).

Here, the facts elicited at the evidentiary hearing establish that the search of the defendant's backpack was a proper inventory search. The defendant was wearing the backpack when he exited his hotel room

and was arrested, and as such, the backpack was constructively part of his person at the time of his arrest. The fact that Sgt. LaPlante removed the defendant's backpack before placing the defendant and the backpack in the cruiser does not undermine the validity of the inventory search where the defendant was wearing the backpack at the time of his arrest. And the inventory search of the backpack was done in compliance with the Raynham Police Department's inventory policy, which was admitted as an exhibit at the hearing. See *Colorado v. Bertine*, 479 U.S. 367, 376-377 (1987) (Blackmun, J., concurring) ("Thus, it is permissible for police officers to open closed containers in an inventory search only if they are following standard police procedures that mandate the opening of such containers in every [case]"); *Commonwealth v. Caceres*, 413 Mass. 749, 755 (1992) ("an unlocked closed container may be searched pursuant to specific written police inventory procedures without violating art. 14").

The basis for the judge's conclusion that the search of the backpack was not a proper inventory search appears to rest on the fact that Sgt. LaPlante removed the backpack before the defendant was

transported to the station. But the problem with such an analysis is that it ignores the fact that the backpack, just like the defendant's clothing, was constructively part of the defendant's person at the time of the arrest. See *Commonwealth v. Vanya*, 75 Mass. App. Ct. 370, 374 (2009), quoting *Lafayette*, *supra* at 648 ("An inventory search of 'every item carried on or by a person who has lawfully been taken into custody by the police will amply serve the important and legitimate governmental interests involved.'") Certainly, once Sgt. LaPlante realized that the defendant was wearing a backpack, he was not required to leave the backpack on the defendant during transportation, where the backpack itself could have contained a weapon. Such police conduct would have been imprudent and potentially dangerous. Instead Sgt. LaPlante took the reasonable measure of removing the defendant's backpack before placing the defendant in the cruiser and transporting both the defendant and the backpack he was wearing to the station. It seems apparent from the judge's decision that had Sgt. LaPlante left the the backpack on the defendant during transportation, the judge would have concluded that the search of the backpack was a proper inventory

search. However, the propriety of the search of the backpack should not hinge on the fact that Sgt. LaPlante took the reasonable measure of removing the backpack before transporting the defendant to the station.

The fact that the officers were able to leave the defendant's belongings that were already inside his hotel room at the hotel is irrelevant to the propriety of the inventory search of the backpack. The defendant was not wearing the items inside his room when he was arrested. In fact, had Sgt. LaPlante not taken the precautionary and entirely reasonable measure of removing the defendant's backpack before transporting him, there can be no question that the defendant would have been transported with the backpack attached to his person. At no point did the defendant ask to leave the backpack in the hotel room; rather, the only request that the defendant did make was that the officers secure additional items inside the hotel room, specifically his computer and play station. Also, the fact that the backpack contained the defendant's bail money supports an inference that he would not have sought to leave it behind had he been asked. And even had the defendant requested to leave


the backpack at the hotel, the police would not have been required to comply where the defendant was wearing the backpack at the time of his arrest.

In sum, the search of the defendant's backpack was a proper inventory search done in compliance with the Raynham Police Department's written inventory policy. As such, the contents found in the defendant's back during the inventory search should not have been suppressed.

CONCLUSION

For the foregoing reasons, this Court should reverse the motion judge's allowance of the defendant's motion to suppress.

Respectfully Submitted,



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May 5, 2015

CERTIFICATION

As counsel for the Commonwealth, I certify that this brief complies with the rules of the court pertaining to the filing of briefs, including Mass. R.A.P. 16(a)(6) (pertinent findings or memorandum of decision); Mass. R.A.P. 16(e) (references to the record); Mass. R.A.P. 16(f) (reproduction of statutes, rules, regulations); Mass. R.A.P. 16(h) (length of briefs); Mass. R.A.P. 18 (appendix to the briefs); and Mass. R.A.P. 20 (form of briefs, appendices, and other papers).

COMMONWEALTH OF MASSACHUSETTS



Tara L. Blackman
Assistant District Attorney

May 5, 2015

Record Appendix

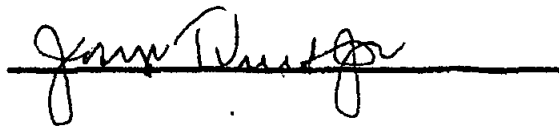
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BRISTOL, SS. On this nineteenth day of June
in the year Two Thousand and Fourteen this indictment was returned and
presented to said Superior Court by the Grand Jury and ordered to be filed and filed.

Attest:



Clerk/Magistrate

TA-DI

No. 1473.C.R.O.D.527

INDICTMENT

Commonwealth

vs.

Jared Abdallah

Traff Percocet 36+ 94C/32E(c)(2)

Sup. C. April Sitting 2014

Commonwealth of Massachusetts

BRISTOL, SS.

At the SUPERIOR COURT holden at Fall River within and for the County of Bristol, for the transaction of criminal business on the First Monday of April, 2014,

THE JURORS for the said Commonwealth on their oath present, That

Jared Abdallah,

on or about June 1, 2013, at Raynham, in the County of Bristol aforesaid,

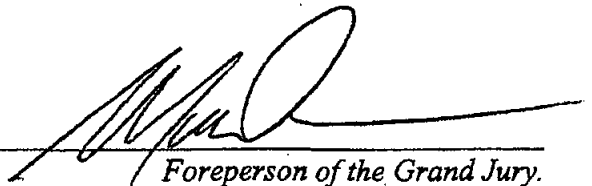
did traffick in Percocet, a derivitive of opium, by knowingly or intentionally manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute or dispense, or bring into this Commonwealth, a net weight of thirty-six grams or more of Percocet, a derivitive of opium, or a net weight of thirty-six grams or more of any mixture containing opium or derivitive thereof, in violation of Chapter 94C, Section 32E(c)(2) of the General Laws of Massachusetts.

(G.L. Chap. 94C, Sec. 32E(c)(2))

A true bill.



Assistant District Attorney.


Foreperson of the Grand Jury.

BRISTOL, SS. On this

20th

day of

June

in the year Two thousand and Thirteen

this indictment was returned and
presented to said Superior Court by the Grand Jury and ordered to be filed and filed.

Attest:



Assl -
Clerk/Magistrate

TA-DI
No. 2013-731-1

INDICTMENT

Commonwealth

VS.

Jared Abdallah

Traff Cocaine 18+ 94C/32E(b)(1)

Sup. C. April Sitting 2013

Commonwealth of Massachusetts

BRISTOL, SS.

At the SUPERIOR COURT holden at Fall River within and for the County of Bristol, for the transaction of criminal business on the First Monday of April, 2013,

THE JURORS for the said Commonwealth on their oath present, That

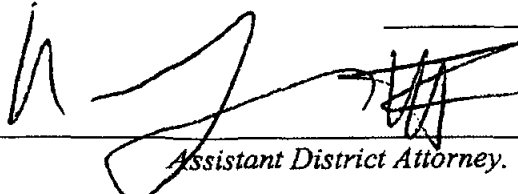
Jared Abdallah,

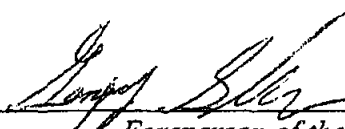
on or about June 1, 2013, at Raynham, in the County of Bristol aforesaid,

did traffick in a controlled substance, to wit: Cocaine, Class B, or any salt thereof, by knowingly or intentionally manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute or dispense, or bring into this Commonwealth, a net weight of eighteen grams or more of Cocaine, or any salt thereof, or a net weight of eighteen grams or more of any mixture containing Cocaine or salt thereof, in violation of Chapter 94C, Section 32E(b)(1) of the General Laws of Massachusetts.

(G.L. Chap. 94C, Sec. 32E(b)(1))

A true bill.


Assistant District Attorney.


Foreperson of the Grand Jury.

BRISTOL, SS. On this

20th

day of

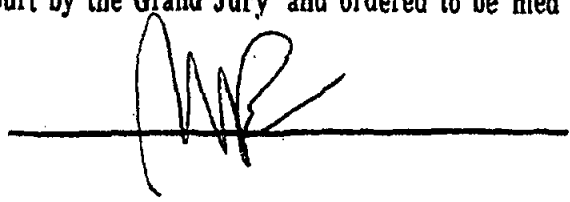
June

in the year Two thousand and Thirteen

this indictment was returned and

presented to said Superior Court by the Grand Jury and ordered to be filed and filed.

Attest:




Clerk/Magistrate

TA-DI

No. *6888 80/3-0731-2*

INDICTMENT

Commonwealth

vs.

Jared Abdallah

Unl Ps Percocet w/Int Dist 94C/32A(a)

Sup. C. April Sitting 2013

Commonwealth of Massachusetts

BRISTOL, SS.

At the SUPERIOR COURT holden at Fall River within and for the County of Bristol, for the transaction of criminal business on the First Monday of April, 2013,

THE JURORS for the said Commonwealth on their oath present, That

Jared Abdallah,

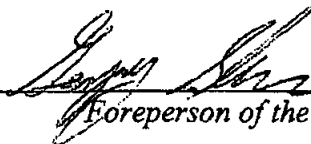
on or about June 1, 2013, at Raynham, in the County of Bristol aforesaid,

did knowingly or intentionally manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense, a Class B controlled substance, to wit: Percocet, in violation of Chapter 94C, Section 32A(a) of the General Laws of Massachusetts.

(G.L. Chap. 94C, Sec. 32A(a))

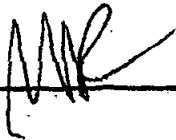
A true bill.


Assistant District Attorney.


Foreperson of the Grand Jury.

BRISTOL, SS. On this 20th day of June
in the year Two thousand and Thirteen this indictment was returned and
presented to said Superior Court by the Grand Jury and ordered to be filed and filed.

Attest:




Clerk/Magistrate

TA-DI

No. BRCK 2013-0231-3

INDICTMENT

Commonwealth

vs.

Jared Abdallah

Rec Stolen Prop +\$250 266/60

Sup. C. April Sitting 2013

Commonwealth of Massachusetts

BRISTOL, SS.

At the SUPERIOR COURT holden at Fall River within and for the County of Bristol, for the transaction of criminal business on the First Monday of April, 2013,

THE JURORS for the said Commonwealth on their oath present, That

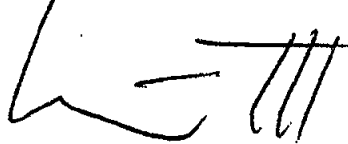
Jared Abdallah,

on or about March 18, 2012, at Raynham, in the County of Bristol aforesaid,

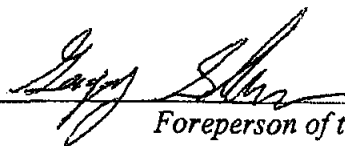
did buy, receive, or aid in the concealment of personal property, of the value of more than two hundred and fifty dollars, the property of Jared Lima, said property then lately before stolen at Raynham, said Jared Abdallah well knowing the said property to have been stolen as aforesaid.

(G.L. Chap. 266, Sec. 60)

A true bill.



Assistant District Attorney.



Foreperson of the Grand Jury.

COMMONWEALTH OF MASSACHUSETTS

Bristol, SS

Fall River Superior Court
#BR CR 2013-0731 (1-3)
#BR CR 2014-0178 (4)

Commonwealth of Massachusetts)

vs.)

MOTION TO SUPPRESS

Jared Abdallah)

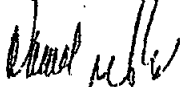
Defendant)

NOW COMES THE DEFENDANT, **JARED ABDALLAH**, and moves that this Honorable Court suppress all evidence seized from a warrantless search of his back pack on or about June 1, 2013.

The defendant states that his rights as guaranteed by the Declaration of Rights of the Constitution of Massachusetts, and the Fourth and Fourteenth Amendments to the Constitution of the United States of America were violated.

Furthermore, the defendant states that any and all evidence obtained as a result of said search be suppressed. In support of said motion defendant is filing an affidavit and memorandum herewith.

Jared Abdallah
By his Attorney



Daniel M. Rich
250 East Main Street
Norton, MA 02766
508-285-4725
BBO# 418450

Date: May 15, 2014

COMMONWEALTH OF MASSACHUSETTS

Bristol, SS

Fall River Superior Court

#BRCR 2013-0731 (1-3)

#BRCR 2014-0178 (4)

Commonwealth of Massachusetts)

vs.)

AFFIDAVIT OF JARED ABDALLAH

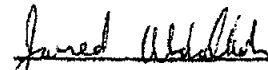
Jared Abdallah)

Defendant)

I, JARED ABDALLAH, do depose and say:

- 1.) I am the defendant in the above-entitled matter.
- 2.) On June 1, 2013, I was arrested by police officers from the Town of Raynham, MA on an outstanding warrant. At the time of my arrest I was at the Quality Inn.
- 3.) When I was arrested I had a back pack on. I was asked to remove the back pack, which I did, and Lieutenant Carr of the Raynham Police Department took possession of the same.
- 4.) I was told by the arresting officer that my back pack, and my lap top and Play Station, which were also taken when I was arrested, would be at the front desk of the police station when I was released.
- 5.) When I arrived at the police station, I was booked and placed in a holding cell. The personal property I had on my person was inventoried.
- 6.) I was asked if I had any money for bail and I said I would have to make a phone call.
- 7.) Officer LaPlante then began to search my back pack. He never asked me permission to go in the back pack, and there was no reason for him to search it.
- 8.) My back pack was unlawfully searched and my constitutional rights were violated.

Signed under the pains and penalties of perjury on this 15th day of ^{May} April 2014.


JARED ABDALLAH

COMMONWEALTH OF MASSACHUSETTS

Bristol, SS

Fall River Superior Court

#BRCR 2013-0731 (1-3)

#BRCR 2014-0178 (5)

COMMONWEALTH OF MASSACHUSETTS)

vs.)

JARED ABDALLAH)

Defendant)

**MEMORANDUM IN SUPPORT
OF MOTION TO SUPPRESS**

FACTS

On June 1, 2013, Raynham Police Sergeant David LaPlante and Lieutenant Brian Carr were dispatched to the Quality Inn of that town for an unwanted guest. They were told to report to Room 206 to remove the unwanted guest, the defendant herein, and that the defendant also had an active warrant for his arrest.

Upon arrival at the Quality Inn they were met by the front desk attendant who said the defendant stayed beyond the check-out time and refused to leave. The police officer proceeded to room 206, where they knocked on the door and then the defendant opened the door and stepped out. He was then told he was being arrested for the outstanding warrant. At the time of his arrest the defendant was wearing a back pack and the police officers asked him to remove the back pack so they could cuff him. The defendant removed the back pack and Lieutenant Carr took possession of the same. The defendant was taken to Officer LaPlante's cruiser and placed in the rear seat. The back pack was also placed in the cruiser in the front seat.

At the police station the defendant was booked and placed in a cell awaiting bail. Officer LaPlante began to inventory the property that was previously taken from the defendant. Allegedly, according to the police report, which the defendant refutes, Officer LaPlante asked the defendant if he had any money for bail and the defendant pointed to his back pack. Officer

LaPlante then grabbed the back pack by the bottom which was a loose cloth back pack with a draw string closure at the top.

Officer LaPlante grabbed the back pack and could "feel" (emphasis added) what he thought, through his training and experience, was loose pills packaged in a baggy. He then began to feel other areas outside the back pack, which according to Officer LaPlante, felt that the packaging was the same way but smaller. Officer LaPlante then looked at the defendant and said that there is more than money in this back pack.

Officer LaPlante then opened the back pack and looked inside. He could see paper money lying in the back pack with a brown pillow case inside. He then took the money, which totaled \$378.00, and then pulled the pillow case out. He then emptied the contents of the pillow case on the booking desk. Inside the pillow case were the following:

- 1.) four (4) bundles of paper money wrapped in elastic bands;
- 2.) clear cellophane from a cigarette package of cigarettes with two (2) pieces of what appeared to be cocaine;
- 3.) a small clear baggy with what appeared to be cocaine;
- 4.) a small clear baggy with what appeared to be three (3) pieces of cocaine;
- 5.) a clear baggy containing what appeared to be several hundred Percocet pills;
- 6.) a clear baggy containing what appeared to be sixteen (16) Percocet pills;
- 7.) a small tied baggy with what appeared to be sixty-seven (67) Percocet pills;
- 8.) a small zip lock bag containing what appeared to be forty-one (41) Percocet pills, and three (3) half pills;
- 9.) a small clear baggy containing what appeared to be fifty-two (52) Percocet pills;
- 10.) a small clear baggy containing what appeared to be six (6) Percocet pills.

The defendant was then charged with trafficking of a class B substance, to wit: cocaine; possession of cocaine with intent to distribute and possession of Percocet with intent to distribute.

ARGUMENT

ISSUE ONE: DID OFFICER LAPLANTE'S SEARCH OF DEFENDANT'S BACK PACK VIOLATE G.L. 276, SECTION 1:

Although searches of property and people are authorized by the United States Constitution and by Article 14 of the Massachusetts Declaration of Rights, Massachusetts General Law Chapter 276, section 1, limits the permissible boundaries of a search incident to a lawful arrest.

More specifically, a search conducted incident to an arrest may be made only for the purposes of seizing fruits, instrumentalities, contraband and other evidence of the crime for which the arrest has been made, in order to prevent its destruction or concealment; and removing any weapons that the arrestee might use to resist arrest or effect his escape. Any property seized as a result of a search in violation of section 1 is not admissible as evidence against the defendant in a criminal proceeding. See Commonwealth v. Madera, 402 Mass. 156, 159-160 (1988).

In the instant case Officer LaPlante did not have the legal authority to search the defendant's back pack at the police station. First, this search was not incident to an arrest because the defendant was arrested back at the Quality Inn for an outstanding warrant. At the Quality Inn the defendant was taken into custody pursuant to that warrant. There was no probable cause at that time that the defendant committed, or, was about to commit, a crime. The arrest was solely for the warrant.

Also, at the time of the arrest the defendant was wearing the back pack and Officer LaPlante requested that he defendant remove the back pack so he could cuff him. If any search of the back pack was warranted it would have been, or should have been, at the Quality Inn.

This case closely parallels the ruling in Commonwealth v. Cassidy, 32 Mass. App. Ct 160 (1992). In Cassidy, the defendant's car was stopped by Officer Gerald Beaupre, of the Douglas police department after seeing it parked two different times in areas posted "no trespassing". After the stop Officer Beaupre noticed that the right front seat passenger appeared to be about eleven years old and nervous and fidgety. Officer Beaupre, upon further checking, discovered

that the young passenger was listed as a runaway by the Woonsocket police department. Officer Beaupre questioned the young boy and asked if he were free to leave the defendant's vehicle at any time and the young boy said no. The defendant was then arrested for kidnapping, searched and placed under arrest. The defendant's car was then searched pursuant to department policy, and the car was towed.

During the search of the defendant's car Officer Beaupre found two back packs and a utility knife on the floor of the rear passenger compartment. From one back pack, not completely closed by a flap on the top, Officer Beaupre retrieved a kitchen knife and a closed brown paper bag. Beaupre opened the brown paper bag and found it contained a smoking pipe with marijuana residue. The defendant was then also charged with possession of a Class D substance.

The Appeals Court ruled that the police officer's warrantless search of a closed paper bag found in the back pack on the floor of the passenger's compartment from the defendant's vehicle was not justifiable as incidental to an arrest within the scope of the second paragraph of G.L. Chapter 276, section 1, inasmuch as the defendant was already handcuffed and under arrest in the rear of the cruiser at the time of the search.

The Court further opined that neither the record nor common sense sustains an argument that there was a connection between the crime that the defendant was charged with (kidnapping) and the paper bag. Commonwealth v. Toole, 389 Mass. 159, 162-164 (1983) (impermissible to search, pursuant to Section 1, the cab of a truck for other evidence of a crime when the crime charged was simple assault); Commonwealth v. Rose, 25 Mass. App. Ct. at 906 (search of zipped bag for evidence of driving while under the influence of alcohol held impermissible under Section 1).

In the case at bar the defendant was only arrested for an outstanding warrant and nothing in the defendant's back pack was either related to the warrant nor could be destroyed that could vitiate the warrant.

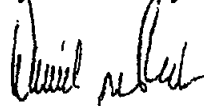
ISSUE TWO: DID DEFENDANT GIVE OFFICER LAPLANT PERMISSION TO SEARCH HIS BACK PACK:

The Commonwealth is expected to argue that Officer LaPlante was given permission by the defendant to go into the back pack. This argument fails for two reasons. First, the defendant denies giving him permission, and second, Officer LaPlante felt areas of the back pack which, in his training and experience, felt like loose pills. Obviously, it can be assumed that loosed pills do not feel like money and any search after that should have been done with express permission of the defendant or with a search warrant.

Further, in reading of the police report it is not clear whether actual permission was granted to Officer LaPlante to go into the back pack. The police report only relates that Officer LaPlante asked the defendant if he had any money for bail. At that time the defendant pointed to his back pack and stated it is in there. See police report attached hereto as Exhibit "A", page 2, paragraph 7. This is not a clear indication that permission was given for Officer LaPlante to go into the back pack. Voluntariness of consent is a question of fact to be determined in the circumstances of each case. Commonwealth v. Cantalupo, 380 Mass. 173, 177, 402 NE2 d 1040 (1980). The questions whether consent was voluntary puts the burden of proof on the Commonwealth. Commonwealth v. Mendes 361 Mass. 507, 512-513 (1972). Commonwealth v. Aguiar, 370 Mass. 490. Interpreting the facts as stated indicates that the Commonwealth has not met its burden and absent a clear showing of voluntaries on the part of the defendant this search must be suppressed.

JARED ABDALLAH

By his attorney



DANIEL M. RICH
250 East Main St.
Norton, MA 02766
508-285-4725
BBO# 418450

June 2014


**RAYNHAM POLICE DEPARTMENT
RAYNHAM, MA**
INCIDENT # / REPORT #
13005798 / 1

OFFICER
LAPLANTE, D

RANK
SERGEANT

REVIEW STATUS
IN PROGRESS

INCIDENT #13005798 DATA

As Of 06/02/2013 06:05:12

BASIC INFORMATION**CASE TITLE**

13005798

LOCATION

164 NEW STATE HWY

APT/UNIT #**DATE/TIME REPORTED**

06/01/2013 11:32:48

DATE/TIME OCCURRED

06/01/2013 11:32 to 06/01/2013 16:00

INCIDENT TYPE/OFFENSE

COCAINE, DISTRIBUTE c94C S32A

PERSONS**ROLE**

POLICE OFFICER

NAME

CARR, BRIAN

SEX

MALE

RACE

WHITE

ADDRESS: 53 ORCHARD ST. RAYNHAM, MA

POLICE OFFICER

REILLY, EDWARD

MALE

WHITE

ADDRESS: 53 ORCHARD STREET RAYNHAM, MA

OFFENDERS**STATUS**

DEFENDANT

NAME

ABDALLAH, JARED A

SEX

MALE

RACE

WHITE

ADDRESS: 185 JUDSON ST RAYNHAM, MA

[NO VEHICLES]**PROPERTY****CLASS**

DRUGS/NARCOTICS

DESCRIPTION

COCAINE/PILLS

MAKE**MODEL****SERIAL #****VALUE**
OFFICER REPORT: 13005798 - 1 / LAPLANTE, D (SERGEANT)
DATE/TIME OF REPORT

06/01/2013 11:32:48

TYPE OF REPORT

INCIDENT

REVIEW STATUS

IN PROGRESS

NARRATIVE

RA-16

On 6/1/13 I Sgt. David LaPlante was working the 8-4 shift assigned to the south sector. Approximately 1139 hrs Shift Supervisor Lt. Brian Carr and I were dispatched to the Quality Inn for an unwanted guest. Police Dispatcher Gregg Czahar told us that he had received a phone call from the clerk at the Quality Inn asking that we remove the guest in room 206. Police Dispatcher Czahar told us that the guest is Mr. Jared Abdallah and that he has an active warrant for his arrest. Det. Edward Reilly radioed that he also was in route.

Upon my arrival I spoke with Ms. Carol Bergen who was working at the front desk. I asked her if she could tell me what had transpired in room 206. Ms. Bergen told me that she just wants him out of the room because its past check out time and he should've been gone already. She told me that when she tried to get him to leave he gave her a hard time. Ms. Bergen told me that she knew the Raynham Police were looking for him yesterday so thats why she called us(see Incident #13005768). She then told me that his aunt rented the room for him and paid for it.

Lt. Carr, Det. Reilly and I proceeded to room 206. As we approached the room I could hear a males voice talking with someone, but could not hear anyone talking back to him. I knocked loudly on the door several times and announced our presence. The door opened and Mr. Abdallah stepped out of the room. As soon as he stepped out I said "Jared we have a warrant for your arrest". Mr. Abdallah was talking with someone on his cell phone. Mr. Abdallah was asked to drop the phone and turn around because he was being placed under arrest. Once he was placed in hand cuffs I realized Mr. Abdallah had a backpack on. I then asked him if he had any needles or weapons on his person. He told me that he had no needles or weapons on him. I then searched him to be sure he had no weapons. I then advised Mr. Abdallah that I would need to remove the hand cuffs so we can remove his backpack. Mr. Abdallah was compliant as I removed the backpack. Lt. Carr took possession of the backpack while I escorted Mr. Abdallah to marked cruiser #255. As I was escorting him I advised him that he is no longer wanted at the Quality Inn. I advised him that once he is released he can pick up his property at the front desk. He then asked if we could get his lap top and Play station from the room. I then asked him if he had a vehicle in the parking lot and he advised me that he did. Det. Reilly advised him that he would secure those items at the police station for him until he is released.

Lt. Carr confirmed with Ms. Bergen that Mr. Abdallah would be able to leave his vehicle in the parking lot and that he could pick his remaining property up at the front desk upon his release. *clothes*

Mr. Abdallah was placed in the back seat marked cruiser #255. Lt. Carr then handed me Mr. Abdallah's back pack, which I put in the front seat with me. He was then transported to the Raynham Police Station for booking. While in route I asked Mr. Abdallah if he had access to money for bail and he told me that he has money in his backpack.

The warrant, a straight warrant, Docket: 1331CR001392 was issued on 5/29/13 from Taunton District Court for the following charge from this town: MGL 266/30 Larceny Under \$250.00.

Upon arriving at the police station Lt. Carr and I began booking Mr. Abdallah using normal booking procedures. Mr. Abdallah was placed in the holding cell in the booking room. I then read Mr. Abdallah his Miranda Warnings from a form and asked him if he understood what I just read to him. Mr. Abdallah told me that he understood and signed the waiver stating he would talk with us. Lt. Carr witnessed and also signed the waiver. I began to inventory the property he had on his person. I again asked Mr. Abdallah if he had money for bail and he pointed to the back pack I had taken off him and stated its in there. I then grabbed the back pack by the bottom, which was a Timberland brand, loose cloth back pack with a draw string closure at the top. When I grabbed the back pack I could feel what through my training and experience felt like loose pills packaged in a baggy. I then began to feel other areas outside the back pack and felt packaging that felt the same way but smaller. I then looked at Mr. Abdallah and said there is more than money in this back pack.

I then opened the top of the back pack and looked inside. I could see paper money lying in the back pack with a pillow case color brown also inside. I took the money

from the back pack, which totaled \$378.00 and then pulled the pillow case out. Also in the back pack was a set of keys and 2 pennies. I then dumped the contents of the pillow case on the booking desk. Inside the pillow case was 4 bundles of paper money wrapped in elastic bands and placed inside clear glassine baggies. There was what appeared to be the clear cellophane from a package of cigarettes with two pieces of what appeared to be cocaine, a small clear baggy with its corner torn and tied containing a piece of what appeared to be cocaine with a yellowish tint, a clear baggy with its corner torn and tied with 3 pieces of cocaine, a clear baggy torn and tied that had what appeared to contain several hundred percocets pills, a small clear baggy torn and tied containing what appeared to be percocets pills (16 count), a small tied baggy with what appeared to be Percocet pills (67 count), a small zip lock type clear bag with red dice printed on it containing what appeared to be Percocet pills (41 count & 3 half pills), a small clear baggy tied that had a whole torn in it containing what appeared to be Percocet pills (52 count) and a small clear baggy torn and tied containing what appeared to be Percocet pills (6 count). The method of packaging the cocaine and pills and the bundling and separation of the money is consistent with that of someone distributing illegal drugs.

Det. Reilly brought Mr. Abdallahs cell phone to the police station, which was confiscated as evidence. Mr. Abdallahs phone kept ringing as it continued to receive calls during the entire booking process. He also gave me 2 small yellow pills that he located in the drawer of the night stand in room 206

Det. Reilly took photographs off all evidence. He later returned to the motel to photograph the inside of room 206.

Lt. Carr and Det. Reilly weighed the cocaine using a scale from the evidence room. The total weight of the cocaine was 29.2 grams.

Lt. Carr and Det. Reilly counted the 4 bundles of money, which totaled \$7,019.00. The total amount of paper money in Mr. Abdallahs possession was \$7,397.00.

All evidence was placed inside evidence bags, labeled and secured in the evidence room by Lt. Carr. Lt. Carr who is the departments evidence officer told me that he and assistant evidence officer Edward Fallo would make arrangements to have the cocaine and pills tested at the lab.

An inquiry of Mr. Abdallahs Commonwealth of Massachusetts Department of Criminal Justice Information Services (BOP) found that he has 33 entries on his adult record to include property, motor vehicle, abuse and drug related crimes. Of those 33 entries 9 are status open with several defaults.

Mr. Abdallah was advised that he would be charged with trafficking class B to wit cocaine, Possess to Distribute cocaine and Possess to Distribute class B (percocets) and that his phone, back pack, pillow case and all monies would be confiscated as evidence of his crimes. The booking process was completed.

I then contacted the on-call bail clerk, Mr. Marc Santos and advised him what we had. Mr. Santos told me that he was setting Mr. Abdallahs bail for the new charges at \$5,000.00, \$100.00 for the warrant and \$40.00 surety totaling \$5,140.00.

Det. Reilly spoke with Mr. Abdallah.

Mr. Abdallah made a phone call to his mother, however he was unable to obtain the money he needed for bail. He was later transferred to the Ash St. Jail in New Bedford.

Due to the aforementioned facts, statements and attached documents I have probable cause to believe that Mr. Jarred Abdallah did possess to distribute class B Cocaine, possess to distribute class B (percocets) and Trafficking Class B (cocaine) in the town of Raynham on 6/1/2013. Therefore I request The Taunton District Court issue a criminal complaint to Mr. Jared Abdallah and that he be arraigned in that court for the following charges: MGL 94C/32E Trafficking Class B (cocaine), MGL 94C/32A/C Possess to Distribute Cocaine and MGL 94C/32A/G Possess to Distribute Class B (percocets).

OFFICER SIGNATURES

Reporting Officer: _____

LAPLANTE, D

SERGEANT

Date: _____

6/2/13

Reviewing Officer: _____

Date: _____

Approving Officer: _____

Date: _____



Incident # 13005798

Printed Name: Jared Abdallah

RAYNHAM POLICE DEPARTMENT

53 Orchard St. Raynham, MA 02767 Phone: (508) 824-2727 Fax: (508) 824-1997

NOTIFICATION OF MIRANDA RIGHTS

- YOU HAVE THE RIGHT TO REMAIN SILENT.
- IF YOU CHOOSE TO SPEAK, ANYTHING YOU SAY MAY BE USED AGAINST YOU IN COURT.
- YOU HAVE THE RIGHT TO CONSULT WITH A LAWYER BEFORE ANSWERING ANY QUESTIONS, AND YOU MAY HAVE HIM OR HER WITH YOU DURING QUESTIONING.
- IF YOU CANNOT AFFORD A LAWYER AND WANT ONE, A LAWYER WILL BE PROVIDED, AT NO COST TO YOU, BY THE COMMONWEALTH.
- YOU MAY ANSWER QUESTIONS NOW AND WAIVE YOUR RIGHT TO COUNSEL AND YOUR RIGHT TO REMAIN SILENT.
- IF YOU DECIDE TO TALK TO ME, YOU STILL HAVE THE RIGHT TO STOP AT ANY TIME AND FOR ANY REASON.
- DO YOU UNDERSTAND WHAT I HAVE TOLD YOU? WILL YOU TALK TO ME NOW?

These rights have been read to me by Officer: Sgt LaFrance

I have read my rights and they have been thoroughly explained to me. I fully understand my rights provided under Miranda.

I fully understand my rights provided under Miranda: J. Abdallah

Yes ☒ No ☐ I will speak with you concerning this matter.

Witness: B. P. C.

DATE: 6/1/13

TIME: 1215

Community and Police Working TOGETHER

SEARCH AND SEIZURE

POLICY & PROCEDURE NO. 1.08	ISSUE DATE: _____
	EFFECTIVE DATE: _____
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.2.4	REVISION DATE: _____

I. GENERAL CONSIDERATIONS AND GUIDELINES

The Fourth Amendment to the U.S. Constitution prohibits "unreasonable" searches and seizures, and the Supreme Court has consistently held that unless they come within one of the few carefully limited exceptions to the search warrant requirement, warrantless searches and seizures are considered unreasonable.¹

The Fourth Amendment to the U.S. Constitution has been interpreted by the U.S. Supreme Court to require that, whenever possible and practicable, with certain limited exceptions, a police officer should always obtain a valid search warrant in advance.²

The following procedures have been prepared to provide basic guidelines that are both legal and practical in the technical area of searches and seizures. In their implementation, officers should consider all related department policies on the following topics: ***Arrests, Stop and Frisk and Threshold Inquiries, Search Warrant Affidavits, Use of Informants and Collection and Preservation of Evidence.***

II. POLICY

It is the policy of this department that:

- A. Warrants shall be obtained for all searches whenever possible and practicable; and
- B. Searches shall be conducted in strict observance of the constitutional rights of the parties involved, and with due regard for the safety of all officers, other persons and property involved.

III. DEFINITIONS

- A. *Affidavit*: A formal declaration or statement of facts, in writing, made voluntarily and confirmed by oath or affirmation before a person having the legal authority to administer such oath or affirmation.
- B. *Exigent Circumstances*: Situations in which law enforcement officials will be unable or unlikely to effectuate a search or seizure for which probable cause exists unless they act swiftly and without prior judicial authorization.³
- C. *Probable Cause*: The facts observed, information obtained from others, and personal knowledge and experience that are sufficient to lead a reasonable and prudent person to believe that a particular crime has been, is being, or is about to be committed, and that seizable evidence of a crime is likely to be found in a specific location or on a specific person, and which would justify a judge or magistrate to issue a search warrant.

IV. PROCEDURES

A. *Search with a Warrant*

1. GENERALLY

The Constitution of the United States and the Massachusetts State Constitution establish a requirement to obtain a search warrant prior to conducting a search of an individual's person or property.

Any search without a warrant is an exception to the warrant requirement of each of these documents.

Searches with a valid search warrant are preferred by the courts.

2. OBTAINING A SEARCH WARRANT

A court or justice authorized to issue warrants in criminal cases may issue a warrant identifying the property to be searched for and naming or describing the person or place to be searched.

An officer seeking a warrant must submit a warrant application and affidavit upon oath that [s]he believes that the property or articles named in the application for the warrant are concealed in a house, place, vessel or vehicle or in the possession of a person anywhere within the Commonwealth and/or territorial waters.

The requirements and procedures for obtaining a search warrant are specified by M.G.L. c. 276, §1. For further information, see the department policy on ***Search Warrant Affidavits***.

3. EXECUTING A SEARCH WARRANT

Officers conducting a search based upon a search warrant are limited to searching the locations named in the body of the warrant and only in such places that the property sought may be concealed.

For further information, see the department policy on ***Executing Search Warrants***.

B. Searches without a Warrant

1. GENERALLY: A police officer should never rely on one of the exceptions whenever it is feasible, under the particular circumstances, to obtain a search warrant in advance.
2. EXCEPTIONS TO WARRANT REQUIREMENTS: Officers may make a warrantless search only when one of the following major exceptions to the search warrant applies:

Warrantless stopping, questioning and frisking (investigative detention);

Search incident to arrest (including protective sweep);

Exigent or emergency circumstances search (including "hot pursuit");

Consent searches;

Motor vehicle searches;

Pre-incarceration and inventory searches;

Protective custody searches; and

Administrative searches.

3. SEARCHES WHICH ARE NOT EXCEPTIONS: The following are not considered invasions of any privacy interest and, therefore, do not come under the search warrant requirement of the Fourth Amendment generally:

The "plain view" doctrine;

The "open fields" doctrine; and

Abandoned property.

4. WARRANTLESS STOPPING, QUESTIONING AND FRISKING (INVESTIGATIVE DETENTION)

Both the Fourth Amendment to the U.S. Constitution and Chapter 41, section 98 of the Massachusetts General laws authorize police officers to briefly detain suspicious persons, to question such persons and, if the officer reasonably believes the person may be armed or dangerous, to frisk that person for weapons.

These procedures are sometimes referred to as a "threshold inquiry." This type of warrantless search and seizure is covered in depth in the department policy on ***Stop, Frisk and Threshold Inquiries***.

C. Search Incident to Lawful Arrest [1.2.4(d)]

1. CRITERIA

A warrantless search of an arrested person may be conducted under the following conditions:

- 1) The arrest is lawful and the search is reasonably related to the circumstances of the arrest;
- 2) The search is conducted only for the purposes of:
 - a) Seizing fruits, instrumentalities, contraband and other evidence of the crime for which the arrest was made;
 - b) In order to prevent its destruction or concealment; and/or
 - c) To remove any weapons that the arrested person might use to resist arrest or to effect his/her escape;⁴
- 3) The search is limited in scope to the person of the arrestee and the immediate surrounding area. Immediate surrounding area means that area from which the arrestee can either obtain a weapon or destroy evidence; and
- 4) The search is substantially contemporaneous with the arrest and conducted in the immediate vicinity of the arrest; however, if safety requires, the officer may delay the search and conduct it at a safe location.

An arrest shall not be used as a pretext in order to make a search.

2. **SEARCH OF A HOUSE:** If a search of a house is to be upheld as incident to an arrest, that arrest must take place inside the house.⁵
3. **SEARCH OF POSSESSIONS AND CLOTHING:** A search may also be made of items actually in possession of the arrested person and clothing worn at the time of arrest, if such search is related to the offense for which the arrest was made.
4. **PROTECTIVE SWEEP**

In addition to a careful search of the area within the arrested person's immediate control, a quick and limited search of a premises may be conducted if there is a reasonable belief that it is imperative for the officers' or others' safety because of the presence of others in the house or apartment.⁶

This search is narrowly confined to a cursory visual inspection of those places in which a person might be hiding and may include a search for weapons.⁷

Any item or object recognizable as criminal evidence discovered in plain view during a justifiable "protective sweep" may be properly seized.⁸

A police officer who has lawfully entered the premises may conduct a protective sweep whether [s]he entered the premises with an arrest warrant, search warrant or the existence of exigent circumstances.

A protective sweep cannot last any longer than it is necessary to dispel the reasonable suspicion of danger and, in any event, no longer than it takes to complete the arrest or search and depart the premises.

5. **USE OF FORCE:** The officer conducting the search may use the degree of force reasonably necessary to:

Protect himself/herself and others present;

Prevent escape; and

Prevent the destruction of evidence.

D. Searches in Emergency or Exigent Circumstances **[1.2.4(e)]**

1. **CRIMINAL ACTS:** A police officer is authorized to conduct a search without a warrant when faced with an emergency situation where delay would endanger his/her or the public's safety or might result in the escape of the offender or the destruction of evidence.⁹

The authority of the police to make warrantless entries in emergency situations, whether criminal or non-criminal, is based upon their fundamental responsibility to preserve the peace and to protect the public safety.¹⁰

The doctrine that permits warrantless entries and searches because of emergency or exigent circumstances requires justification by the police that it was impractical for them to obtain a search warrant in advance and that the warrantless search was truly necessitated by the emergency circumstances which could not have been anticipated.¹¹

While conducting a lawful search justified by emergency or exigent circumstances, a police officer may seize any incriminating evidence inadvertently discovered in plain view.

2. PUBLIC SAFETY

Many emergencies justifying a warrantless entry and search do not necessarily involve criminal acts; for example, when a police officer hears a call for assistance, when [s]he observes smoke or flame, or when [s]he learns of an actual or potential natural or man-made calamity or disaster, [s]he has the duty and obligation to respond immediately.

BURNING BUILDINGS:

- 1) A warrantless entry into a burning building is permissible in an emergency, and officials may remain for a reasonable time to

investigate the cause of the fire, and any evidence of arson discovered is admissible at trial.

- 2) Any reentry after the fire has been extinguished and officials have left the scene should be made pursuant to a search warrant, unless the re-entry is justified by a recognized exception to the warrant requirement such as consent, emergency or abandonment.¹²

EXPLOSIVES/OTHER DANGEROUS ITEMS: When an officer has reasonable cause to believe premises contain things imminently likely to burn, explode, or otherwise cause death, serious bodily harm, or substantial destruction of property, the officer may, without a search warrant, enter and search such premises to the extent reasonably necessary for the prevention of such death, bodily harm or destruction.¹³

3. FRESH AND CONTINUED PURSUIT

The U.S. Supreme Court case of *U.S. v. Santana*¹⁴ set out factors supporting justification of exigent circumstances under this doctrine, including:

- 1) There is fresh and continued pursuit of the suspect;
- 2) A crime of violence was involved;
- 3) There was a strong possibility that the suspect was armed;
- 4) The suspect was known or reasonably believed to be in the building;
- 5) There was a likelihood that the suspect might escape unless immediately apprehended; and
- 6) There was sufficient justification for failure to obtain a search warrant.

Where the above or other emergency factors are not present, police may stake out the building or premises until a warrant is obtained.¹⁵

E. Search by Lawful Consent [1.2.4(a)]

1. Because such issues as who may give lawful consent to a police entry and search or whether the consent was given voluntarily will be carefully scrutinized by the court, police should not unduly rely on such consent. On the other hand, when properly elicited, consent to a search may expedite a criminal investigation. Police may engage in a warrantless search after obtaining consent even in circumstances where they do not have probable cause.
2. For there to be a valid consent to search, the following three elements must be satisfied:

The consenting party must have sufficient lawful authority over the premises or property to be able to give consent to a search of that premises or property.

Consent may be obtained from any person who has the right of ownership, possession or control of the premises or property. If there is serious doubt, a search warrant should be obtained.

JOINTLY OWNED PROPERTY: Consent to a warrantless search by one who possesses common authority or other sufficient relationship to the premises or effect sought to be inspected is valid as against an absent, non-consenting person with whom that authority is shared. Generally, if property, such as a house, apartment or business, is owned jointly by two or more persons, any one of them may consent to a search of the common areas of the premises.¹⁶ The consent will be valid even if an *absent* co-tenant objects. However, if a *present* co-tenant objects to the search, there is no consent.¹⁷

- 1) **SPOUSE:** A spouse may give consent to a police search of a jointly owned home, even without the knowledge or permission of the other spouse.¹⁸ But, if the other spouse is present and objects, there can be no consent.¹⁹
- 2) **PARENT:** A parent may give consent to search premises under the parent's control, although it involves searching a child's room, and the parent has general access to the child's room.²⁰ However, where the child, whether or not an adult, has exclusive access, often locked, to certain areas or property, the parent's consent may not be enough.²¹
- 3) **CHILDREN:** Generally, a child may not give consent to a police search of premises or property owned by the child's parents.
- 4) **ROOMMATE:** A roommate may be able to give consent to a police search of common areas of the apartment, but the roommate probably cannot give consent to a search of areas exclusively reserved for the suspect, such as his/her bedroom, luggage or closet. Although, if there is a present roommate who objects, there is no consent to a search.
- 5) **LANDLORD:** Generally, a landlord cannot give consent to the search of a tenant's apartment.²² However, a landlord may give consent to searches of common areas, such as hallways and stairwells.
- 6) **HOTELS:** A hotel or motel owner or manager cannot give consent to a search of a guest's lodgings.²³

Consent must be freely and voluntarily given.²⁴

- 1) Officers shall notify the person from whom consent is sought of the person's right to refuse to give consent.²⁵

- 2) Consent to search may be given orally, but preferably it should be in writing.²⁶
- 3) Consent cannot be presumed from silence.
- 4) Consent must be free of any coercion, intimidation, or threat, so officers must avoid even the appearance of intimidation or duress.
- 5) Officers shall not gain consent through the use of misrepresentation or fraud.
- 6) Consent shall be requested prior to search and after the police officers have identified themselves.

A consent search shall be limited to the area specified.

Consent may be revoked at any time and the search shall cease upon revocation, unless additional factors or information have come to light which justify a continued warrantless, nonconsensual search. For example, evidence found prior to revocation of consent may be retained and used as a basis for an immediate arrest or as probable cause for a further search (if exigent circumstances exist) or for obtaining a search warrant.

F. Motor Vehicle Searches

1. GENERALLY

Officers are prohibited from stopping motor vehicles without reasonable suspicion of criminal activity or motor vehicle violations.²⁷

If it is at all possible and practicable, a search warrant should always be obtained in the prescribed manner in advance of a motor vehicle search, as this procedure is generally preferred by the courts.

Warrantless searches of motor vehicles may be conducted under several exceptions to the warrant requirement.

- A. STOPPING, QUESTIONING AND FRISKING OF MOTOR VEHICLE OPERATOR OR OCCUPANTS: A "stop and frisk" type of protective search occurs when the officer reasonably believes that his/her safety or the safety of others is in danger and is done in order to determine whether a suspect is armed, with the search confined to the area of the motor vehicle from which a suspect might gain possession of a weapon.²⁸
- B. SEARCH OF MOTOR VEHICLE INCIDENT TO ARREST OF OPERATOR OR OCCUPANT: This is a search incident to a lawful arrest limited to the arrestee's person and the area within his or her immediate control, i.e., the area where the arrestee might gain possession of a weapon or destructible evidence.²⁹

AUTOMOBILE EXCEPTION:

A warrantless search of a vehicle may be made when the following elements are satisfied:³⁰ [1.2.4(C)]

- 1) The vehicle must be lawfully stopped on a public way or is found parked in a public place,³¹
- 2) There is probable cause to believe that the vehicle contains contraband or other evidence at the initiation of the search.

Note: The inherent mobility of an automobile itself justifies a warrantless search of the vehicle.³²

A vehicle may be removed to a safe location, such as a police station and subsequently searched.³³

A vehicle held in police custody for an extended period of time may not be covered under the Automobile Exception.³⁴

2. CONSENT: A search may be conducted with the voluntary consent of the person in lawful control of the vehicle.³⁵

1. ROADBLOCKS

Roadblocks stops (for example, to detect drivers under the influence of alcohol) are permissible if the selection of motor vehicles to be stopped is not arbitrary, if the safety of the public is ensured by taking necessary precautions, if the motorists' inconvenience is minimized, and the roadblock procedure is conducted pursuant to a plan devised by law enforcement supervisory personnel.³⁶

If police have a description of a suspect vehicle, they may stop all vehicles fitting that description.

2. PLAIN VIEW OBSERVATIONS: If a police officer has lawfully stopped a motor vehicle and is questioning the operator, any incriminating item in or on the vehicle observed in plain view, including anything observed with the use of a flashlight, may furnish probable cause to search the vehicle and seize the item observed without a warrant.³⁷

3. MOTOR VEHICLE INVENTORY

If the vehicle is impounded, the vehicle shall be searched and all personal property found in the vehicle shall be inventoried and kept in safe custody in accordance with the department policy on **Motor Vehicle Inventories**.

All police officers shall be especially watchful and alert when stopping and searching a motor vehicle or its occupants, as many officers have been seriously injured, some fatally, in taking this police action which should never be considered "routine."

In stopping and searching motor vehicles, officers shall take all reasonable precautions for their personal safety, such as directing the occupants to alight

from the vehicle and frisking them for weapons when the officer has a reasonable belief that they may be armed and dangerous.³⁸ [1.2.4(g)]

4. ADMINISTRATIVE SEARCHES: Motor vehicles are subject to various types of administrative searches which do not require search warrants. For example, the annual motor vehicle inspection procedure is, in effect, a warrantless search.

B. Booking Inventory Searches [1.2.4(g)]

1. Prior to incarcerating a detainee in a police lockup, police shall conduct an inventory search of his/her person and inspection of his/her belongings in accordance with the department policies on ***Detainee Processing*** and ***Protective Custody***.
2. This shall be done to uncover and safeguard any weapons or implements the detainee could use to injure himself/herself or others, to safeguard valuables and to protect the police against false claims of theft or loss of the detainee's belongings.

C. Administrative Searches [1.2.4(g)]

1. The police may, under certain circumstances, engage in warrantless searches or inspections as part of their administrative functions.
2. For example, it is proper to search a person who is about to visit a detainee. See departmental policy on ***Detaining Prisoners***.

D. The "Plain View" Doctrine [1.2.4(g)]

1. Officers may seize contraband or evidence without a warrant under the "plain view" exception to the warrant requirement if the following conditions are met:³⁹

There must be a prior lawful entry;

The officer must be within "plain view" of the item seized;

The officer finds the item seized "inadvertently";⁴⁰ and

The item seized must be "immediately apparent" as contraband or evidence of crime.

2. Lawful entry includes:

Entry with a valid warrant;

Entry to make a lawful warrantless arrest;

Entry as a result of lawful consent;

Entry in an emergency to render necessary aid or assistance; and

Item viewed from a public area.

3. Items are immediately apparent as contraband if the officer has probable cause to believe they are:

Instrumentalities or means by which any crime was committed, (such as weapons, masks, tools, etc.);⁴¹

Contraband (articles which may not be legally possessed, such as counterfeit money or controlled substances, etc.);⁴²

Fruits of any crime (such as stolen property);⁴³

Other evidence of any crime (such as clothing or other items fitting the description of the criminal offender); or

Property which bears a reasonable relationship to the purpose of the search (such as documents establishing who owns the premises searched if ownership is an element of the crime).⁴⁴

E. Abandoned Property [1.2.4(g)]

1. Abandoned or discarded property may be searched by the police and seized.
2. Examples of abandoned property include:

Trash in a collection area accessible to the public;⁴⁵

The contents of a hotel room wastebasket once an individual has vacated the room;⁴⁶

An apartment or hotel room, provided the guest or tenant has left with an intention not to return and the landlord or owner has given permission to search;⁴⁷ and

Items thrown on the ground by a suspect.⁴⁸

F. Open Field [1.2.4(g)]

1. An open field is that portion of privately owned land surrounding a person's dwelling that is too remote or removed from the physical dwelling to be considered part of the "house" such that it is protected by the Fourth Amendment.⁴⁹
2. The "house" that is protected by the Fourth Amendment includes the grounds and buildings immediately surrounding the dwelling.⁵⁰
3. Open fields may be searched without a warrant even though the terrain in question is not easily accessible to the public and even though the owner may have posted "No Trespassing" signs and may even have a locked gate.⁵¹

G. SEARCHES BY PERSONS OTHER THAN LAW ENFORCEMENT OFFICERS

1. PRIVATE INDIVIDUAL: Evidence obtained by a private individual who is not acting as an employee or agent of the government, as a result of searching someone else's property, is admissible, whether or not the search by that private individual was lawful.⁵²
2. POLICE OFFICER ACTING AS SECURITY GUARD: Evidence discovered as a result of the warrantless search conducted by a police officer acting as a private security guard is not admissible if [s]he acts beyond the scope of the private employer's business.⁵³

H. Reports

1. In every case where a search is conducted without a warrant, the police officers involved shall make a written report of the circumstances.
2. This will include all important facts relative to the incident and an inventory of any evidence seized, in accordance with departmental procedures.

¹ *Stoner v. California*, 376 U.S. 483, 84 S.Ct. 889 (1964).

² *Mincey v. Arizona*, 437 U.S. 385, 89 S.Ct. 2408 (1978).

³ *U.S. v. Campbell*, 581 F.2d 22 (C.A. NY).

⁴ M.G.L. c. 276, §1.

⁵ *United States v. Wilson*, 36 F.3d 205, 208 (1st Cir. 1994).

⁶ *Maryland v. Buie*, 494 U.S. 325, 110 S.Ct. 1093 (1990).

⁷ *United States v. Martins*, 413 F.3d 139, 149, 150 (1st Cir. 2005).

⁸ *Com. v. Bowden*, 379 Mass. 472, 399 N.E.2d 482 (1980).

⁹ *Warden v. Hayden*, 387 U.S. 294, 87 S.Ct. 1642 (1967); *Com v. Moran*, 370 Mass. 10, 345 N.E.2d 380 (1976).

¹⁰ *Thurlow v. Crossman*, 336 Mass. 248, 143 N.E.2d 812 (1957).

¹¹ *Com v. Guaba*, 417 Mass. 746, 632 N.E.2d 1217 (1994).

¹² *Michigan v. Tyler*, 436 U.S. 499, 98 S.Ct. 1942 (1978); *Michigan v. Clifford*, 464 U.S. 287, 104 S.Ct. 641 (1984).

¹³ *Com. v. Marchione*, 384 Mass. 8, 422 N.E.2d 1361 (1981).

¹⁴ *U.S. v. Santana*, 427 U.S. 39, 96 S.Ct. 2406 (1976); *Com v. Moran*, 370 Mass. 10, 345 N.E.2d 380 (1976).

¹⁵ *U.S. v. Adams*, 621 F.2d 41 (1st Cir. 1980).

¹⁶ *U.S. v. Matlock*, 415 U.S. 164, 94 S.Ct. 988 (1973); *Com. v. Maloney*, 399 Mass. 785, 506 N.E.2d 1147 (1987).

¹⁷ *Georgia v. Randolph*, 2006 WL 707380, Decided March 22, 2006.

DETAINEE PROCESSING

I. POLICY

It is the policy of the Raynham Police Department to protect the constitutional rights of detainees during booking while protecting the safety of department employees and detainees.

II. DEFINITIONS

- A. *Strip Search*: An inspection of a naked individual, or the movement or removal of clothing to expose for inspection the buttocks, pubic area, or female breast area, without any scrutiny of the body cavities.
- B. *Visual Body Cavity Search*: A visual inspection of the anal and genital areas.
- C. *Body Cavity Search*: A search involving an internal physical examination of body cavities including the anal and genital areas.

III. PROCEDURES

A. Arrival at Station

1. NOTIFICATIONS

- a. When officers transporting a detainee arrive at the police facility, transporting officers shall:
 - 1) Request that the sally-port door be opened.
 - 2) Notify the dispatcher, using the police radio, of their arrival and the odometer reading of their vehicle.
- b. Once inside, request that the sally-port door be closed.

2. POLICE FIREARMS

- a. The transporting officers shall remove and secure their firearms prior to handling detainees.
- b. All persons, including but not limited to assisting officers, booking officers, detectives, and supervisors shall secure their firearms prior to entering the booking area.
- c. No firearms are allowed in the booking room or holding facility during the processing or detention of detainees.

- 3. **DOORS**: All doors to the booking area will be secured during the entire booking process.

- 4. **BOOKING ROOM ACCESS**: Only authorized personnel are allowed in the booking area during processing.

5. VIOLENT OR UNCONTROLLABLE DETAINEES

- a. Detainees who are violent, intoxicated, or uncontrollable may be placed directly into a holding cell until such time as they are calm enough to process.
- b. Officers shall not remove restraints if the behavior of the detainee poses an excessive risk of injury to officers or the detainee.

B. Examination by Officer in Charge: Upon the arrival of a person in custody, the shift supervisor shall:

1. Examine the detainee for injuries and note any medical complaints.
2. If any injuries do exist, inquire as to whether these injuries were sustained during or prior to the arrest.
3. Instruct the Booking Officer to make a notation of the injuries on the intake form.
4. Report to the Chief of Police, in writing, any cuts, bruises or injuries found.
5. If a detainee complains of any medical problems, the shift supervisor should follow the department's procedure.

C. Booking

1. STAFFING: At least two officers, if available, will conduct detainee booking whenever possible.
2. DETAINEE SEARCH FOR WEAPONS
 - a. Prior to the removal of handcuffs, a full and thorough search shall be conducted of the detainee's person for weapons.
 - b. An officer of the same sex as the detainee shall conduct the search whenever possible.
 - 1) A trained department employee or an officer from another police agency of the same sex as the detainee may conduct the search, if necessary.
 - 2) If no officer or trained employee of the same sex is available, a search for weapons may be conducted by an officer of the opposite sex.
 - a) Depending upon the circumstances, a search may be able to be conducted without actually touching the detainee.
 - i. Some portion of clothing may be such that the outline of a weapon may be obvious.
 - ii. Pockets may be turned inside out.

- iii. The waist band may be exposed and rolled outward to expose the body side.
- iv. A hand-held metal scanner may detect the presence of metal items.
- b) At no time will the safety of employees, other detainees or the detainee be placed in jeopardy by a detainee suspected of concealing a weapon.
 - i. The detainee may continue to be restrained until an officer of the detainee's same sex can be located to conduct a search.
 - ii. Detainees of the opposite sex may conduct the search, if necessary. Such search must be witnessed by another employee and conducted in view of booking video cameras, if possible.

3. HANDCUFFS

- a. The transportation handcuffs shall remain on detainees until the booking officer instructs that they be removed.
- b. Detainees shall generally be handcuffed to the cuffing bar which is specifically designated for that purpose. Handcuffs may be removed:
 - 1) For the purpose of conducting a booking inventory;
 - 2) For the purpose of fingerprinting; or
 - 3) At the discretion of the booking officer.
- c. In making the decision to remove handcuffs from a detainee, the booking officer should consider the conduct of the arrestee, the offense for which the arrest has been made, and the recommendations of the arresting and/or transporting officers.

4. BOOKING INVENTORY

- a. An inventory of the detainee's property shall be conducted.
 - 1) When the handcuffs are removed, the detainee shall be directed to remove all articles or items of personal property that [s]he is carrying on his/her person. This will include:
 - a) All items in all pockets;
 - b) Items secreted on the detainee's person;
 - c) Belts; and
 - d) Jewelry. Note: In the event a piece of jewelry cannot be removed without damaging it, the jewelry may remain with the detainee if it does not pose a threat to the officers..

- 2) If the detainee is expected to be placed in a holding cell or taken directly to court after booking, the following items shall also be removed and placed with the detainee's property:
 - a) Shoe laces;
 - b) Draw strings
 - c) Bras; and
 - d) Other similar items.
- 3) After the arrestee claims to have removed all personal effects from his/her person, [s]he will be subject to a full search of his/her person by an officer of the same sex. If such an officer is not available:
 - a) A trained department employee or an officer from another police agency, of the same sex as the detainee, may conduct the search, if necessary.
 - b) If no officer or trained employee of the same sex is available, as a last resort a search may be conducted by having the person:
 - i. Turn pockets inside out, if possible.
 - ii. Lift the shirt off of the waist band and roll the waist band.
 - iii. Expose the interior of cuffs.
 - iv. Bras should be removed by the prisoner in privacy, out of view of male officers.
- 4) The following items should be searched as part of the inventory:
 - a) All outer clothing worn by the arrestee;
 - b) Wallets;
 - c) Purses; and
 - d) Packs, bags, or other containers brought in as personal property.
- 5) Any container or article found on the detainee's person or carried by the detainee shall be opened and its contents inventoried.
- 6) Papers, documents or other writings found on the detainee's person may be examined only to the extent necessary to check the person's identity, ensure his/her physical safety, ensure the removal of items dangerous to cell administration, and protect the department from charges of theft. Any search of a detainee's papers or other possessions for investigative

purposes may be conducted only upon obtaining either the arrestee's consent, preferably in writing, or a search warrant.

- 7) The officer conducting the inventory shall list the inventoried items under the detainee property section of the booking program. The items should be exposed to the view of the booking video camera if possible.
- 8) All inventory property not of contraband should be placed into a department clear prisoner inventory bag. After items have been listed on bag, officer can ask party to sign on inventory bag of their property.

b. STORAGE

- 1) All items removed from the detainee shall be marked with the detainee's identification and placed in the detainee property locker if the department is going to hold the property.
- 2) Large, bulky items which do not fit into the detainee's property locker shall be placed in a large plastic bag, tied shut and tagged with the detainee's identification. The bag shall be placed in proximity of the detainee property storage area in view of the security camera.

c. RETURN OF PROPERTY

- 1) Items removed from the detainee which are not taken as evidence shall be:
 - a) Returned to the detainee upon release from the facility; or
 - b) Transported to court or to the receiving agency and turned over to the custody of the receiving officials.

Note: Bulky items which will not be accepted by the court shall be turned over to the Evidence property officer for safe keeping.

- 2) The inventory of returned property shall be viewed with and signed by the arrestee and witnessed. If the arrestee refuses to sign the inventory form, the booking officer should insert "REFUSED" on the signature line.

5. STRIP SEARCH/VISUAL BODY CAVITY SEARCHES

- a. A strip search or visual body cavity search of an arrestee is warranted only if officers have probable cause to believe that the arrestee is concealing contraband or weapons on his/her body.
- b. All strip searches and visual body cavity searches must be approved by the officer-in-charge. Strip searches shall be conducted in a professional manner so as not to humiliate the detainee.

- c. All strip searches and visual body cavity searches shall be conducted by an officer/employee of the same sex as the detainee and out of the public view. Only the individual(s) conducting or witnessing the search should be able to see the person being searched. For safety purposes, additional employees may also witness the search in the event that it appears that the detainee may become violent.
- d. A private room shall be used when available. Video cameras and recorders, if active in the search area, shall be set so as not to display or record the search. Audio recordings are authorized.
- e. The officer/employee conducting the strip/visual body cavity search shall not touch or prod any body part.
- f. A suspect need not be completely naked to conduct a strip search. The removal of clothing and search of the upper body may be followed by the suspect's replacing the clothing, and the process then followed for the lower body.
- g. A report shall be made of all incidents where a strip search is conducted, identifying:
 - 1) The probable cause for the search;
 - 2) The supervisor giving authority for the search;
 - 3) The officer conducting the search and assisting officers;
 - 4) The location where the search was conducted; and
 - 5) The results of the search.

6. MANUAL BODY CAVITY SEARCHES

- a. A body cavity search of an arrestee is warranted only if officers have probable cause to believe that the arrestee is concealing contraband or weapons in his/her body.
- b. Body cavity searches shall not be conducted without the express approval of the officer-in-charge and a search warrant signed by a judge (not a Magistrate or Assistant Clerk Magistrate).
- c. Manual body cavity searches shall be conducted by medical personnel, in a private and hygienic setting, and in a medically approved manner.
- d. A report shall be made of all incidents where a body cavity search is conducted identifying:
 - 1) The probable cause for the search: this may be accomplished by referencing the search warrant;
 - 2) The supervisor giving authority to request the search warrant;

- 3) The names of medical staff conducting the search;
- 4) The location where the search was conducted; and
- 5) The results of the search.

7. DETAINEE RIGHTS

- a. During the booking process, the booking officer shall:
 - 1) Inform the detainee of his/her rights pursuant to Miranda by reading the Miranda Warning from a printed card or form.
 - 2) Inform the detainee again of his/her right to the use of the telephone. [S]he shall be allowed to exercise his/her right in order to contact family or friends, to arrange for bail, or to contact an attorney at the completion of the booking process.
- b. Toll calls will be made at the detainee's expense.
- c. Officers shall allow calls of a type, number and duration that are reasonable and practical, including access to an attorney.
- d. If a detainee is provided a monitored or recorded telephone, [s]he shall be informed of the monitoring (unless by court order), and a sign shall be posted in English and other language(s) prevalent in the community unless an audible signal is given on the telephone after detainees are told they are recorded or monitored.
- e. When arrested on a warrant, the arrestee shall, upon request, be provided with a printed copy of the warrant contained in the warrant management system within six hours of the request.
- f. OUI Arrest Rights: Any person arrested and held in custody for operating a motor vehicle while under the influence of intoxicating liquor shall be afforded all applicable rights and processed in accordance with department policy.

8. CJIS CHECKS

- a. A computer "wanted" check shall be run on all persons arrested or held in protective custody. The printed query sheet produced will be attached to the intake form.
- b. A Board of Probation check shall be run on all persons arrested by this department. The hard copy produced will be attached to the intake form.
- c. A suicide check (Q5) query shall be run on every person to be detained in the department's holding facility, and the hard copy produced shall be attached to the intake form.
- d. A Triple III query shall be run on every person to be detained or charged for any type of offense and the hard copy will be attached with the complaint to the courthouse

9. IDENTIFICATION: Any detainee who is unknown to the personnel on duty at the station should be positively identified. Identification may be determined through:

- a. A government photo identification;
- b. An investigative identification (name check, booking or RMV photo, etc.); or
- c. Fingerprint-based criminal history.

10. BOOKING

- a. All persons taken into custody under arrest or in protective custody by members of this department shall be booked using the department booking software.
- b. The booking process creates a criminal history and custodial history of each person arrested.
- c. The booking program gathers the following information:
 - 1) Biographical data on the arrestee, including name, address, social security number, telephone number, date and place of birth, age, marital status, and names of parents and spouse. Any refusal to answer any of these questions shall be noted on the form.
 - 2) Information about the crime, including the offense(s) with which the individual is charged and the arresting officer's name(s).
 - 3) Physical description of the arrestee, including sex, race, height, weight, color of hair and eyes, complexion, build, scars, marks, tattoos, and physical condition, e.g., body deformities, trauma markings, bruises, lesions, and ease of movement.
 - 4) Property inventory and disposition.
 - 5) CJIS query results.
- d. All bookings shall be printed and the records shall be kept in secure area limited to authorized persons. These forms shall serve as the permanent arrest/detention record of the individual arrested/detained.

11. FINGERPRINTING

- a. All persons arrested by this department shall be fingerprinted each and every time that they are arrested, using live scan fingerprinting. The fingerprints shall be downloaded to the state and federal government to create or be added to the detainee's fingerprint-based criminal history.
- b. Fingerprints should not be submitted until all charges have been listed in the fingerprinting program.

- c. In the event that the live scan fingerprinting equipment is not available or functioning, the arrestee shall be fingerprinted using ink, and the fingerprint card shall be forwarded to the State Police Identification Section for entry into I.A.F.I.S.
- d. The booking officer shall check the message log on the live scan system for fingerprint-based criminal history responses.
- 12. PHOTOGRAPHING: All persons arrested by this department shall be photographed each and every time they are arrested.
- 13. SUICIDE RISK EVALUATIONS
 - a. All detainees shall be screened for suicidal tendencies using the suicide evaluation screening. This may help to establish the detainee's suicide risk.
 - b. A detainee shall be placed on suicide watch if:
 - 1) The risk screening indicates a suicide risk;
 - 2) The detainee exhibits signs or symptoms of suicidal behavior;
 - 3) The detainee threatens to commit suicide;
 - 4) The detainee attempts to commit suicide;
 - 5) The detainee's name appears on the Q5, Suicide Risk File; or
 - 6) The detainee is brought to a hospital for a mental health evaluation, released, and returned to the police holding facility.
 - c. The officer-in-charge shall consider the detainee's charges, mental state, behavior and other factors and determine if the detainee should be transported to the hospital for a mental health evaluation (Section 12).

D. Holding Cells

- 1. REMOVAL TO CELL: Prior to placing a detainee in a cell within the holding facility, the booking officer shall conduct a security search of the cell, including a search for weapons and contraband. {
 - a. If any weapons or contraband are found, the detainee should be placed in another cell and the supervisor notified.
 - b. The officer finding the item shall submit a report regarding the item found.
 - c. The supervisor shall place the item into evidence and conduct an investigation into the matter.
- 2. PLACING IN CELL: Whenever an officer closes a cell door to incarcerate a detainee, [s]he shall test the door to be sure it is securely locked. Any problems in securing a cell door shall be

reported to the officer-in-charge, who may take the cell out of service and report the problem to the holding facility manager.

E. Medical Screening and Treatment Procedures

1. INTAKE SCREENING: The prisoner shall, upon arrival at the station and before transfer to another facility, be received and screened by the booking officer. This screening shall consist a brief inquiry into:
 - a. The current health of the detainee;
 - b. Any medications being taken;
 - c. Behavioral observations, including consciousness and mental status.
 - d. A notation of any obvious body deformities, trauma markings, bruises, lesions, jaundice, ease of movement, etc.

Note: All observations shall be noted on the intake form.

2. TREATMENT

- a. Medical treatment shall be arranged for any detainee in need of medical treatment.
- b. No employee shall be allowed to go beyond the scope of his/her training in administering to the emergency or special medical needs of any person held in the custody of this department. This scope is determined by the level of emergency medical training of the individual members of the department (i.e., CPR, First Responder, EMT, etc.).

F. Group Arrests and Overflow Situations

1. DETAINEE INTAKE

- a. In the event of a group arrest, detainees arriving at the station will be placed in a holding cell, with multiple detainees in a single cell if necessary, or otherwise secured as directed by the officer-in-charge.
- b. If, as the result of a group arrest, or at any other time, the officer-in-charge determines that the number of persons to be detained in the holding facility will exceed the number for which the facility was designed, [s]he may authorize the overcrowding on a temporary basis.
 - 1) Non-violent, low security risk detainees may be held as a group, if from the same incident or by sex and age.
 - 2) The temporary overcrowding of this area is permitted under these circumstances until such time as the overcrowding

situation can reasonably be relieved, typically through the transfer or release of persons being held.

- 3) In order to accomplish this, the officer-in-charge shall examine the list of detainees and attempt to expedite the bail or release of the less serious offenders.
- 4) If release of a sufficient number of detainees to relieve the overcrowding of the holding facility is not possible, the officer-in-charge may request the use of a neighboring police department's holding facilities, with the use of this department's personnel to maintain security and control, if requested by the other department.
- c. The officer-in-charge is authorized to call in such additional personnel as may be necessary to satisfy the staffing requirements of the overflow situation.
2. DETAINEE PROCESSING: Each detainee will be brought to a booking area to be booked and fully processed.

G. Handling Juveniles and Females

1. DETAINEE PROCESSING

- a. When a child between the ages of seven (7) and seventeen (17) is arrested with or without a warrant, the department policy and procedure shall be followed. Persons age seventeen (17) and older are considered adults for the purposes of criminal law.
- b. Juveniles shall not be booked at the same time as adult arrestees.
- c. Females shall not be booked at the same time as male arrestees.

H. Bail and Arraignment

1. COURT BUSINESS HOURS: If the court is in session when the booking process and all related arrest reports are completed, it shall be the responsibility of the officer-in-charge to ensure that the arrestee is transported to the court without delay.
2. COURT NOT IN SESSION: If the court is not in session when the booking process and all related reports are completed, the arrestee shall be confined in the holding facility until bail can be arranged, or if bail cannot be arranged, until the next session of the court.
3. BAIL
 - a. Arrestees shall be informed of the right to bail and afforded the opportunity for bail.
 - b. It shall be the responsibility of the officer-in-charge to ensure that an arrestee's opportunity to make bail is not impeded.

c. Bail shall be determined by the bail clerk.

d. Requesting Bail:

- 1) Prior to contacting the bail clerk, officers should have the following information available:
 - a) Identity of the person for whom bail is to be determined. If the identity is in question, the bail clerk shall be so advised.
 - b) Residence of the person.
 - c) Age of the person.
 - d) Offenses charged.
 - e) Criminal history (BOP).
 - f) Triple III
 - g) History of court defaults (BOP).
 - h) Issues relating to dangerousness, if appropriate.
 - i) Detainee funds and whether or not the detainee wishes to be bailed.
- 2) The detainee shall be advised of his/her bail status. If the detainee has funds and wishes to be bailed, the bail clerk should be so advised.
- 3) If the detainee does not have funds and wishes to be bailed, the detainee may attempt to call others for funds.

e. When the bail money is at the police station, the bail clerk shall be called and so advised.

- 1) Police employees can take bail money from persons wishing to bail the detainee. However, they can wait with the funds for the arrival of the bail clerk.
- 2) The bail clerk shall be provided with the booking paperwork, application for complaint, criminal citation, or served warrant.
- 3) The detainee's cell shall be inspected for contraband and fresh damage caused by the detainee. The detainee shall be escorted to the bail clerk from the holding cell by a police officer to be processed for bail.
- 4) Detainees under arrest that are also in protective custody may be returned to custody after being bailed until such time as they may be released.

4. PROBABLE CAUSE HEARING

- a. Detainees who are not released on bail within twenty-four hours following an arrest on charges for which probable cause has not

been determined by a judge or magistrate are entitled to a probable cause hearing.

- b. The arresting officer or shift supervisor shall report the facts, orally or in writing, to a neutral magistrate (usually the Clerk of Courts).
- c. The probable cause review must take place within twenty-four hours.
- d. In the event that the review cannot take place due to extraordinary circumstances, the hearing should take place as soon as possible and the reason for the delay documented.

I. Release of a Detainee

1. RETURN OF PROPERTY

- a. All items of property shall be compared to the items listed on the inventory report and the individual shall be requested to sign the form indicating that [s]he has received the property. A refusal to sign shall be noted in writing on the inventory report.
- b. Any items which were held for evidence or as contraband shall be indicated on the inventory report.

2. **CHANGE OF MEDICAL CONDITION:** The medical screening information shall be rechecked, and any changes from the condition at entry shall be noted on the intake form. An inquiry shall be made as to the origin of any changes in condition, and the answers shall be documented on the intake form.

3. **HOLDING CELL INSPECTION:** The cell shall be searched for weapons, contraband and damages, and the detainee criminally charged for any damage caused by him or her. Any unusual conditions shall be reported to the Chief of Police or his/her designee.

J. Receiving Persons from Outside Agencies

1. INTAKE OF DETAINEE

- a. Upon receiving a detainee from another law enforcement agency, the in-processing officer shall:
 - 1) Ensure the identity of the officer in whose custody the detainee is being held.
 - a) If the officer is known to the receiving officer, no further identification is necessary.
 - b) Obtain and make a photocopy for the file of a government (police, parole, federal government) identification card or document.

- 2) Verify the authority of the person making the commitment. Commitments must be made under the authority of the individual's employment. The following persons may request that this department accept their prisoner:
 - a) A law enforcement officer;
 - b) A corrections officer;
 - c) A deputy sheriff authorized to serve criminal process; and
 - d) A constable, provided that the detainee is charged with a criminal offense.
- 3) Obtain detainee information from the delivering officer. The information should include:
 - a) A copy of any booking sheet;
 - b) Any court documents if the detainee is to be bailed; and
 - c) A point of contact and telephone number where a responsible member of the delivering agency can be reached at any time during the day or night.
- 4) The delivering officer shall fill out this department's detainee intake form.
- 5) The detainee shall be screened for medical issues.

2. DETAINEE PROPERTY

- a. Detainee property will not be accepted. It is the responsibility of the agency for which the detainee is being held.
 - b. The detainee shall be searched and then placed in a cell.
3. **SPECIAL DETAINEE HANDLING:** Supervision for hospitalization, high level suicide watch, or other special handling shall be the responsibility of the delivering agency.
4. **BAIL:** Detainees may be bailed from custody if bail is set by the bail clerk in the jurisdiction of the delivering agency.

ADDENDUM

Mass. General Laws, Chapter 94C § 32A(a)

§ 32A. Class B Controlled Substances -- Unauthorized Manufacture, Distribution, Dispensing or Possession; Penalties.

(a) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute or dispense a controlled substance in Class B of section thirty-one shall be punished by imprisonment in the state prison for not more than ten years, or in a jail or house of correction for not more than two and one-half years, or by a fine of not less than one thousand nor more than ten thousand dollars, or both such fine and imprisonment.

Mass. General Laws, Chapter 94C § 32E(c)(2)

§ 32E. Marijuana, Cocaine, Heroin, and Other Controlled Substances - Unauthorized Trafficking; Penalties.

(c) Any person who trafficks in heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof by knowingly or intentionally manufacturing, distributing or dispensing or possessing with intent to manufacture, distribute, or dispense or by bringing into the commonwealth a net weight of 18 grams or more of heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof or a net weight of 18 grams or more of any mixture containing heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof shall, if the net weight of heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof or any mixture thereof is:--

(2) Thirty-six grams or more but less than 100 grams, be punished by a term of imprisonment in the state prison for not less than 5 nor more than 30 years. No sentence imposed under this clause shall be for less than a mandatory minimum term of imprisonment of 5 years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed, but not in lieu of the mandatory minimum term of imprisonment, as established herein.

Mass. General Laws, Chapter 94C § 32E(b)(1)

(b) Any person who trafficks in a controlled substance defined in clause (4) of paragraph (a), clause (2) of paragraph (c) or in clause (3) of paragraph (c) of Class B of section thirty-one by knowingly or intentionally manufacturing, distributing or dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the commonwealth a net weight of 18 grams or more of a controlled substance as so defined, or a net weight of 18 grams or more of any mixture containing a controlled substance as so defined shall, if the net weight of a controlled substance as so defined, or any mixture

thereof is:

(1) Eighteen grams or more but less than 36 grams, be punished by a term of imprisonment in the state prison for not less than 2 nor more than 15 years. No sentence imposed under this clause shall be for less than a minimum term of imprisonment of 2 years, and a fine of not less \$2,500 nor more than \$25,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

Mass. General Laws, Chapter 266 § 60

§ 60. Stolen Goods -- Buying or Receiving. * [Effective until April 6, 2015.]

Whoever buys, receives or aids in the concealment of stolen or embezzled property, knowing it to have been stolen or embezzled, or whoever with intent to defraud buys, receives or aids in the concealment of property, knowing it to have been obtained from a person by a false pretense of carrying on business and dealing in the ordinary course of trade, shall, if the value of such property does not exceed two hundred and fifty dollars, be punished for a first offense by imprisonment in jail or house of correction for not more than two and one half years or by a fine of not more than two hundred and fifty dollars; or, if for a second or subsequent offense, or if the value of such property exceeds two hundred and fifty dollars, be punished by imprisonment in the state prison for not more than five years, or by imprisonment in a jail or house of correction for not more than two and one-half years or by a fine of not more than five hundred dollars.